

HOUSE BILL 584

Q3

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By: **Delegates Ross, Hucker, Ali, Barnes, Benson, Carr, Holmes, Ivey, Kaiser, Manno, Mizeur, Niemann, Pena-Melnyk, Ramirez, Valderrama, and Waldstreicher**

Introduced and read first time: February 3, 2010

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Corporate Income Tax – Combined Reporting**

3 FOR the purpose of requiring certain corporations to compute Maryland taxable
4 income using a certain method; altering certain requirements for certain
5 corporations to file certain statements with the Comptroller; providing that,
6 subject to regulations of the Comptroller, certain groups of corporations shall
7 file a combined income tax return reflecting the aggregate income tax liability of
8 all of the members of the group; requiring the Comptroller to adopt certain
9 regulations; requiring certain regulations to be consistent with certain
10 regulations adopted by the Multistate Tax Commission; defining certain terms;
11 providing for the application of this Act; and generally relating to the Maryland
12 corporate income tax.

13 BY adding to

14 Article – Tax – General
15 Section 10–402.1
16 Annotated Code of Maryland
17 (2004 Replacement Volume and 2009 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Tax – General
20 Section 10–804.1 and 10–811
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2009 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Tax – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **10-402.1.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
3 MEANINGS INDICATED.

4 (2) "COMBINED GROUP" MEANS:

5 (I) ALL MEMBERS OF A UNITARY GROUP THAT ARE
6 SUBJECT TO THE INCOME TAX OR WOULD BE SUBJECT TO THE INCOME TAX IF
7 DOING BUSINESS IN THE STATE; AND

8 (II) OTHER MEMBERS OF THE UNITARY GROUP NOT
9 DESCRIBED IN ITEM (I) OF THIS PARAGRAPH UNDER THE CIRCUMSTANCES AND
10 TO THE EXTENT PROVIDED IN REGULATIONS ADOPTED BY THE COMPTROLLER
11 TO PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME OF ANY
12 MEMBER OF THE COMBINED GROUP FOR ANY PERIOD.

13 (3) "UNITARY GROUP" MEANS AN AFFILIATED GROUP OF
14 CORPORATIONS:

15 (I) THAT IS ENGAGED IN A UNITARY BUSINESS; AND

16 (II) MORE THAN 50% OF THE VOTING STOCK OF EACH
17 MEMBER OF WHICH IS DIRECTLY OR INDIRECTLY OWNED BY:

18 1. A COMMON OWNER OR COMMON OWNERS, EITHER
19 CORPORATE OR NONCORPORATE; OR

20 2. ONE OR MORE MEMBER CORPORATIONS OF THE
21 GROUP.

22 (B) WHETHER OR NOT THE COMBINED GROUP FILES A COMBINED
23 INCOME TAX RETURN UNDER § 10-811 OF THIS TITLE, A MEMBER OF A
24 COMBINED GROUP SHALL COMPUTE ITS MARYLAND TAXABLE INCOME USING
25 THE COMBINED REPORTING METHOD UNDER THIS SECTION.

26 (C) UNDER THE COMBINED REPORTING METHOD, IF A CORPORATION IS
27 A MEMBER OF A UNITARY GROUP AND IS SUBJECT TO THE MARYLAND INCOME
28 TAX, THE PART OF THE CORPORATION'S MARYLAND MODIFIED INCOME THAT IS
29 DERIVED FROM OR REASONABLY ATTRIBUTABLE TO TRADE OR BUSINESS
30 CARRIED ON IN THE STATE SHALL BE DETERMINED AS FOLLOWS:

31 (1) DETERMINE THE MARYLAND MODIFIED INCOME OF THE
32 COMBINED GROUP, BY COMBINING THE CORPORATION'S INCOME WITH THE

1 INCOME OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING
2 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT
3 CLEARLY THE INCOME OF THE COMBINED GROUP;

4 (2) DETERMINE THE PART OF THE COMBINED GROUP'S
5 MARYLAND MODIFIED INCOME THAT IS DERIVED FROM OR REASONABLY
6 ATTRIBUTABLE TO TRADE OR BUSINESS CARRIED ON IN THE STATE USING A
7 MARYLAND APPORTIONMENT FRACTION OF THE COMBINED GROUP, BASED ON
8 NUMERATORS AND DENOMINATORS OF THE PROPERTY, PAYROLL, AND SALES
9 FACTORS UNDER § 10-402 OF THIS SUBTITLE COMPUTED BY COMBINING THOSE
10 AMOUNTS ASSOCIATED WITH THE ACTIVITIES OF THE CORPORATION WITH THE
11 ACTIVITIES OF OTHER MEMBERS OF THE COMBINED GROUP, DISREGARDING
12 TRANSACTIONS BETWEEN MEMBERS OF THE COMBINED GROUP TO REFLECT
13 CLEARLY THE INCOME ALLOCABLE TO MARYLAND; AND

14 (3) FOR EACH MEMBER OF THE COMBINED GROUP THAT IS
15 SUBJECT TO THE MARYLAND INCOME TAX, ALLOCATE A PORTION OF THE
16 AMOUNT DETERMINED UNDER ITEM (2) OF THIS SUBSECTION TO THAT
17 CORPORATION BY MULTIPLYING THE AMOUNT DETERMINED UNDER ITEM (2) OF
18 THIS SUBSECTION BY A FRACTION:

19 (I) THE NUMERATOR OF WHICH IS THE MARYLAND
20 APPORTIONMENT FRACTION OF THAT CORPORATION, DETERMINED BY USING
21 THAT CORPORATION'S MARYLAND FACTORS IN THE NUMERATORS OF THE
22 APPORTIONMENT FORMULA AND USING THE COMBINED FACTORS OF ALL
23 MEMBERS OF THE COMBINED GROUP IN THE DENOMINATORS OF THE
24 APPORTIONMENT FORMULA; AND

25 (II) THE DENOMINATOR OF WHICH IS THE SUM OF THE
26 MARYLAND APPORTIONMENT FRACTIONS OF THE MEMBERS OF THE COMBINED
27 GROUP THAT ARE SUBJECT TO THE MARYLAND INCOME TAX.

28 (D) (1) SUBJECT TO REGULATIONS ADOPTED BY THE COMPTROLLER,
29 A CORPORATION THAT IS PART OF A COMBINED GROUP MAY ELECT TO
30 DETERMINE ITS INCOME DERIVED FROM OR ATTRIBUTABLE TO TRADE OR
31 BUSINESS IN THE STATE USING A WATER'S EDGE METHOD AS DESCRIBED IN
32 THIS SUBSECTION.

33 (2) UNDER THE WATER'S EDGE METHOD, THE COMBINED GROUP
34 FOR PURPOSES OF THE COMBINED REPORTING METHOD REQUIRED UNDER THIS
35 SECTION SHALL INCLUDE ONLY THE FOLLOWING AFFILIATED ENTITIES:

1 **(I) CORPORATIONS THAT ARE INCORPORATED IN THE**
2 **UNITED STATES, EXCLUDING CORPORATIONS MAKING AN ELECTION UNDER §§**
3 **931 THROUGH 936 OF THE INTERNAL REVENUE CODE;**

4 **(II) DOMESTIC INTERNATIONAL SALES CORPORATIONS, AS**
5 **DESCRIBED IN §§ 991 THROUGH 994 OF THE INTERNAL REVENUE CODE AND**
6 **FOREIGN SALES CORPORATIONS AS DESCRIBED IN §§ 921 THROUGH 927 OF THE**
7 **INTERNAL REVENUE CODE;**

8 **(III) ANY CORPORATION, OTHER THAN A BANK, REGARDLESS**
9 **OF THE PLACE WHERE IT IS INCORPORATED IF THE AVERAGE OF ITS PROPERTY,**
10 **PAYROLL, AND SALES FACTORS WITHIN THE UNITED STATES IS 20% OR MORE;**

11 **(IV) EXPORT TRADE CORPORATIONS, AS DESCRIBED IN §§**
12 **970 THROUGH 972 OF THE INTERNAL REVENUE CODE;**

13 **(V) A FOREIGN CORPORATION DERIVING GAIN OR LOSS**
14 **FROM DISPOSITION OF AN INTEREST IN REAL PROPERTY IN THE UNITED**
15 **STATES TO THE EXTENT RECOGNIZED UNDER § 897 OF THE INTERNAL**
16 **REVENUE CODE; AND**

17 **(VI) UNDER THE CIRCUMSTANCES AND TO THE EXTENT**
18 **PROVIDED BY REGULATIONS THAT THE COMPTROLLER ADOPTS:**

19 1. **A CORPORATION NOT DESCRIBED IN ITEMS (I)**
20 **THROUGH (V) OF THIS PARAGRAPH, TO THE EXTENT OF ITS INCOME DERIVED**
21 **FROM OR ATTRIBUTABLE TO SOURCES WITHIN THE UNITED STATES AND ITS**
22 **FACTORS ASSIGNABLE TO A LOCATION WITHIN THE UNITED STATES; OR**

23 2. **AN AFFILIATED CORPORATION THAT IS A**
24 **CONTROLLED FOREIGN CORPORATION, AS DEFINED IN § 957 OF THE INTERNAL**
25 **REVENUE CODE.**

26 **(3) THE USE OF THE WATER’S EDGE METHOD IS SUBJECT TO THE**
27 **TERMS AND CONDITIONS THAT THE COMPTROLLER REQUIRES BY REGULATION,**
28 **INCLUDING ANY CONDITIONS THAT ARE NECESSARY OR APPROPRIATE TO**
29 **PREVENT THE AVOIDANCE OF TAX OR TO REFLECT CLEARLY INCOME FOR ANY**
30 **PERIOD.**

31 **(E) (1) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
32 **NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.**

33 **(2) THE REGULATIONS ADOPTED BY THE COMPTROLLER SHALL**
34 **BE CONSISTENT WITH THE “PRINCIPLES FOR DETERMINING THE EXISTENCE OF**

1 A UNITARY BUSINESS” (REG. IV.1.(B)) ADOPTED BY THE MULTISTATE TAX
2 COMMISSION.

3 10–804.1.

4 [(a) In this section:

5 (1) “corporate group” means:

6 (i) an affiliated group or controlled group under § 1504 or §
7 1563 of the Internal Revenue Code; or

8 (ii) an affiliated group of corporations:

9 1. that is engaged in a unitary business; and

10 2. more than 50% of the voting stock of each member of
11 which is directly or indirectly owned by a common owner or common owners, either
12 corporate or noncorporate, or by one or more members of the group; and

13 (2) “corporate group” does not include:

14 (i) any corporation that, for any reason, is not subject to United
15 States federal income tax;

16 (ii) an insurer as defined in § 1–101 of the Insurance Article; or

17 (iii) a regulated investment company, as defined in § 851(a) of
18 the Internal Revenue Code.]

19 [(b)] (A) Each corporation that is required to file an income tax return
20 under this title [and is a member of a corporate group] shall file with the
21 Comptroller[:

22 (1) a pro forma “water’s edge” combined corporate income tax return
23 filed in accordance with regulations adopted by the Comptroller; and

24 (2)], in a format specified by the Comptroller:

25 [(i)] (1) the sales factor that would be calculated for this State
26 and the difference in Maryland income tax that would be owed if the corporation were
27 required to include in the numerator of the sales factor for purposes of apportioning
28 income to the State all sales of property shipped from an office, store, warehouse,
29 factory, or other place of storage in this State where:

30 [1.] (I) the purchaser is the federal government; or

1 **[2.] (II)** the property is shipped or delivered to a
2 customer in a state in which the selling corporation is not subject to a state corporate
3 income tax or state franchise tax measured by net income and could not be subjected
4 to such a tax if the state were to impose it; and

5 **[(ii)] (2)** for any income that the taxpayer has identified, on
6 the income tax return filed under this title or on an income tax return filed in any
7 state, as income that is nonoperational and therefore not apportionable:

8 **[1.] (I)** the amount and source of that nonoperational
9 income; and

10 **[2.] (II)** if the commercial domicile of the corporation is
11 in this State, the difference in tax that would be owed if the corporation were required
12 to allocate 100% of the nonoperational income to Maryland to the fullest extent
13 allowed under the United States Constitution.

14 **[(c)] (B)** (1) The statements required under subsection **[(b)] (A)** of this
15 section:

16 (i) shall be filed annually, for all taxable years beginning after
17 December 31, 2005, but before January 1, 2011, on or before dates specified by the
18 Comptroller in an electronic format as specified by the Comptroller;

19 (ii) shall be:

20 1. made under oath and signed in the same manner as
21 required for income tax returns under § 10–804 of this subtitle; and

22 2. subject to audit by the Comptroller in the course of
23 and under the normal procedures applicable to corporate income tax return audits;
24 and

25 (iii) notwithstanding any other provision of law, shall be treated
26 as confidential taxpayer information subject to Title 13, Subtitle 2 of this article.

27 (2) The Comptroller shall develop and implement an oversight and
28 penalty system to ensure that corporations provide the required disclosure statements
29 in a timely and accurate manner.

30 (3) The Comptroller shall publish the name of, and penalty imposed
31 on, any corporation failing to file a statement required under this section or filing an
32 inaccurate statement.

33 **[(d)] (C)** (1) A corporation submitting a statement required under this
34 section may submit supplemental information that, in its sole judgment and

1 discretion, could facilitate proper interpretation of the information included in the
2 statement.

3 (2) A corporation shall file a supplemental statement under this
4 section within 60 days after:

5 (i) the corporation files an amended tax return under this title;
6 or

7 (ii) the corporation's tax liability for a tax year is changed as the
8 result of an audit adjustment or final determination of liability by the Comptroller or
9 by a court of law.

10 [(e)] (D) (1) The Comptroller shall:

11 (i) collect, compile, and analyze the information submitted
12 under this section;

13 (ii) use the information submitted under this section to provide
14 analyses as requested by the Governor or the General Assembly relating to the
15 corporate income tax or proposals for changes to the corporate income tax; and

16 (iii) on or before March 1 of each year, based on information
17 provided in income tax returns and the data submitted under this subsection, submit a
18 report to the Governor and, subject to § 2-1246 of the State Government Article, to the
19 General Assembly, concerning the corporate income tax.

20 (2) The report required under this subsection shall:

21 (i) summarize the information submitted under this section;
22 and

23 (ii) provide detailed analyses of the characteristics of corporate
24 taxpayers, including:

25 1. historical series of data and detailed reports for the
26 reported year; and

27 2. the distribution of Maryland taxable income, income
28 tax liability, and other elements of the corporate income tax such as tax credits,
29 modifications to income, and net operating loss carryovers.

30 (3) The information provided in the report shall be provided by various
31 categories, including:

32 (i) business category; and

1 (ii) various measures of size, such as taxable income, in-State
2 and worldwide payroll, and in-State and worldwide gross receipts.

3 **[(f) (E)]** The Comptroller shall adopt appropriate regulations to implement
4 the provisions of this section.

5 10-811.

6 **(A) [Each member of] EXCEPT AS PROVIDED BY AND SUBJECT TO**
7 **REGULATIONS ADOPTED BY THE COMPTROLLER,** an affiliated group of
8 corporations [shall file a separate income tax return] **ENGAGED IN A UNITARY**
9 **BUSINESS SHALL FILE A COMBINED INCOME TAX RETURN REFLECTING THE**
10 **AGGREGATE INCOME TAX LIABILITY OF ALL OF THE MEMBERS OF THE**
11 **AFFILIATED GROUP THAT ARE ENGAGED IN A UNITARY BUSINESS.**

12 **(B) THE COMPTROLLER SHALL ADOPT REGULATIONS THAT ARE**
13 **NECESSARY OR APPROPRIATE TO CARRY OUT THIS SECTION.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2010, and shall be applicable to all taxable years beginning after December 31,
16 2009.